IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.626/2006.

Date of Decision :18.5.2007.

Lal Singh. …Petitioner.

Versus:

State of H.P. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioner: Ms.Ritta Goswami, Advocate.

For Respondents 1 to 3. Mr.C.B.Singh. Dy.Advocate General.

Sanjay Karol, J (Oral).

The petitioner has assailed the award dated 25th May, 2006 passed in Reference No.82/2004 in case titled as Lal Singh Vs. State of H.P. and others passed by the H.P.Industrial Tribunal-cum-Labour Court, Dharamshala, District Kangra, H.P. The learned counsel for the petitioner submits that the award is bad inasmuch as there is an error apparent on the face of the record. Along with the reply, the respondent-employer annexed the Mandays chart showing the number of days the petitioner-employee had worked. The Tribunal wrongly came to the conclusion that the petitioner-employee had not worked for more than 240 days in the calendar year preceeding 12 months from the date of his alleged termination.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

A perusal of the material on record placed before this Court, including the chart would show that the petitioner had infact completed 240 days preceeding 12 months from the date of his dis-engagement. This factual position is also admitted by the learned Deputy Advocate General. In this view of the matter, the learned Tribunal has seriously erred in holding that the petitioner had not completed 240 days of service with the respondents.

The record also shows that the notice dated 1st March, 2001 alleged to have been issued to the petitioner whereby his services were dispensed with is not in conformity with the provisions of Section 25(F) of the Industrial Disputes Act, 1947 (hereinafter referred to as `the Act').

The learned counsel for the petitioner further argued that there is sufficient evidence on record to show that not only juniors to the petitioner had been retained in the service but also new persons were employed after his dis-engagement. In view of the fact the award is to be set aside on the another ground, it is not necessary for this Court to go into this question at all.

During the course of hearing, the learned counsel for the petitioner submitted that her client is ready to furnish an undertaking to this Court through her statement that he shall not claim any back wages and shall claim his wages only from the date of joining. For the purposes of continuity in service and seniority, date of reference of the award i.e. 26th April, 2004, is acceptable.

This undertaking of the petitioner-employee is taken on record. The award is accordingly set aside and the petitioner-employee is directed to be re-instated into the service of the respondents.. For the purposes of continuity in service, seniority shall be reckoned w.e.f 26th April, 2004, and he shall be entitled for wages from the date of his joining.

The learned counsel for the petitioner apprehends that the respondents may not allow the petitioner to join. In this view of the matter, the respondents are directed to inform the petitioner-employee the time and place

of posting within a period of 15 days. Intimation be also given to the petitioner through her counsel.

No other point was pressed or urged by the learned counsel for the parties.

In this view of the aforesaid reasons, the impugned award dated 25.5.2006 is set aside. The writ petition is accordingly disposed of.

(Sanjay Karol),
Judge.

May 18, 2007(R)